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TAGS: [GM](#) [IZ](#) [JA](#) [KS](#) [KTIA](#) [MARR](#) [PGOV](#) [PREL](#) [SN](#) [SOFA](#)
SUBJECT: IRAQI SOFA NEGOTIATOR VISIT - BACKGROUND
INFORMATION

REF: A. STATE 53211
[1](#)B. BAGHDAD 739
[1](#)C. BAGHDAD 1037
[1](#)D. BAGHDAD 1536

Classified By: NEA DAS Lawrence E. Butler for reasons 1.4 (b) and (d).

SUMMARY

[1](#)1. (U) This is a joint Department of State-Department of Defense cable.

[1](#)2. (S) The Status of Forces Agreement being negotiated with Iraq is intended to be an enduring document similar to SOFAs the United States has with other countries: setting the "rules of the road" whenever U.S. forces are present in the host country, and covering such issues as jurisdiction over personnel, access to facilities, import/export of materiel, freedom of movement within the country, taxation, etc. However, because of the current situation in Iraq, the SOFA text under negotiation includes three "Attachments" of limited duration that would provide combat and detention authorities, as well as exclusive U.S. jurisdiction over certain DOD contractors for incidents occurring during the performance of their contracts. This cable provides background information only to further prepare posts to support the fact-finding visit of the Iraqi SOFA negotiating team (reftel A). This visit is entirely an Iraqi initiative. U.S. interlocutors should limit their discussions to the workings of the bilateral SOFA with your host country and, in particular, should not discuss the progress or potential results of the U.S.-Iraqi SOFA negotiations. End summary.

SOFA AND STRATEGIC FRAMEWORK

[1](#)3. (S) Bilateral SOFA negotiations with Iraq began on March 11, 2008, in Baghdad. Iraqi Deputy Foreign Minister Mohammed Haj Hamoud leads the Iraqi negotiating team while Ambassador Robert Loftis leads the U.S. team. (NOTE: The Government of Iraq has emphatically asked that, for security reasons, no members of its negotiating team, including the lead, be identified publicly under any circumstances. End note). The United States and Iraq are also engaged in parallel negotiations of a Strategic Framework that encompasses the full range of political, economic, diplomatic, cultural, and security relationships between the two countries. The two

documents will be brought together in a single "package," but the exact way in which that will be done is yet to be determined.

SOFA NEGOTIATIONS

14. (S) The discussion of the draft SOFA has been a serious and workman-like affair. The Iraqis prepared for the negotiations by examining other U.S. SOFAs, and were familiar with most of the concepts. There have been no particular surprises in the Iraqis' questions and comments, which mirrored in many ways other recent SOFA negotiations: jurisdiction over U.S. forces and civilian personnel, property ownership, respect for local laws and customs, host nation rental charges for use of facilities, etc. Discussion of the three unique attachments has focused primarily on the authority to conduct combat operations and security detentions, with less time on the question of U.S. vice Iraqi jurisdiction over those DOD contractors required to carry weapons to perform their duties (e.g., security contractors). The U.S. delegation has also provided the Iraqis with the separate draft agreement to address similar non-DOD contractors in the same manner as DOD contractors.

15. (S) The two sides have made substantial progress in

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negotiating the text, coming to agreement on a number of provisions (see ref D). Key differences remain, including on jurisdiction over personnel (military and DOD civilian employees, but not dependents), rent, authorities for combat and detention operations, jurisdiction over certain contractors, and taxation. The teams plan to reconvene in early June, possibly in Washington after the GOI SOFA negotiating team visits Turkey, Germany, Japan, Korea, and Singapore to discuss with those governments the implementation of their SOFAs with the United States.

BRIEFING THE IRAQIS

16. (S) Posts should be aware that the travel of the Iraqi SOFA negotiating team is entirely an Iraqi initiative, intended to demonstrate to Iraq's Council of Representatives and the Iraqi public that the negotiating team is conducting due diligence in their discussions with the United States. Neither precise trip itineraries, delegation lists, nor objectives have been shared with the USG. Ref A requested Embassies discuss the Iraqi visit with host governments and facilitate any requests from the Iraqis for briefings from local U.S. officials. We now understand the Iraqi team may request permission to visit military facilities used by the U.S. in at least some of the countries they are visiting. Washington asks posts and commands to accommodate these requests to the extent feasible without impacting operations. Briefings should focus on SOFA implementation issues and be kept at the SBU/FOUO level. Posts may coordinate with local commands to obtain, if available, a knowledgeable military judge advocate for embassy meetings. The above background on the SOFA negotiation process with Iraq is provided only for background information to assist embassies and commands in preparing for possible Iraqi questions and inform discussions with the Iraqi delegation. Posts and commands are requested to avoid discussing or commenting on the bilateral SOFA negotiations with Iraq, even if asked directly to do so.

17. (C) For Singapore: We understand that the Iraqis have added Singapore to the list of countries to be visited because of the 2005 Strategic Framework Agreement (SFA) between the United States and Singapore. In discussions with host government, Post is requested to emphasize Iraqi interest in the SFA. If host government raises the issue of the SOFA and requests USG consent to discuss the classified

1990 MOU regarding U.S. use of facilities in Singapore, and associated 2005 Protocol, Post should reply that it is awaiting instructions from Washington on authority to disclose the contents of these documents to the Iraqi delegation. (NOTE: DOD's internal suspense for a decision on disclosure of these documents to the Iraqis is May 28.)

18. (C) The Iraqis are likely to focus on a few key questions such as jurisdiction over U.S. DOD personnel and payment for access to facilities. To the extent that these issues arise, posts and commands are requested to make the following points in the context of our bilateral relationship with the host nation:

-- Emphasize, to the extent applicable in the given country, that even where there is concurrent jurisdiction, the host nation often waives its rights to prosecute and relies on U.S. DOD authorities to take appropriate action (disciplinary action, prosecution under the Uniform Code of Military Justice (UCMJ), referral for prosecution under the Military Extraterritorial Jurisdiction Act (MEJA), etc.);

-- U.S. exemption as a sovereign from any taxes, fees, or other charges that are akin to taxes;

-- Note, where applicable, that not only does the host nation not charge the United States for access to its facilities, the host nation contributes significant amounts in non-personnel stationing costs;

-- Explain the process for settling claims for damage to non-government property of host nation citizens, including cost-sharing aspects;

-- Procedures for import and export of official items without

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customs charge or inspection;

-- Explain how the SOFA is implemented through joint commissions or other mechanisms with the host nation.
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